IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 342 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NARANJI PERAJI TRANSPORT CO

Versus

RAMNIKBHAI B WAGHELA

Appearance:

MR PS CHARI for Petitioner

MR SUREN M SHAH for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/12/97

ORAL JUDGEMENT

This petition arises of the judgment and award of the learned Chief Judge, Labour Court, Rajkot passed on Recovery Application NO. 1322 of 1980 on 30th April, 1984.

2. The respondent herein (hereinafter referred to as

the workman) was in employment with the petitioner (hereinafter referred to as "the transport company") for more than nine years. It appears that on 1st May, 1980, the workman resigned from the service and on 23rd July, 1980, he preferred the above Recovery Application NO. 1322 of 1980 under section 33-C (2) of he Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The workman claimed that every day he had worked for nearly 12 hours and he was, therefore, entitled to over time for three hours every day. He further claimed that he had worked on all Sundays without any leave and he was entitled to a weekly off. He, therefore, claimed wages for 468 Sundays. He also claimed wages for 63 days leave and bonus at the rate of 20 percent for SY 2036. The labour Court, under its impugned judgment and award, rejected the claim of the workman for overtime for three hours every day and the wages for 63 days' leave. The Court did awarded a sum of Rs. 14348/88 ps. for 468 Sundays, the workman claimed to have worked and also the bonus as claimed by the workman.

Feeling aggrieved, the transport company has preferred this petition. Learned advocate Mr. Chari has appeared for the transport company. He has submitted that the amount being nominal, he does not press his challenge to the bonus awarded to the workman and he confines his challenge to the overtime awarded to the workman for 468 Sundays that the workman alleged to have worked.

Mr. Chari has contended that the transport company does not recognise the workman's right to receive wages for the Sundays he claimes to have worked on. He has submitted that the transport company disputed the claim of overtime wages for Sundays claimed by the workman. In view of the said dispute, the workman could have raised industrial dispute. However, there being no undisputed claim or the claim adjudicated by the competent court or the tribunal, the labour court could not have exercised its jurisdiction under section 33-C(2) of the Act. In support of his contention, he has relied upon the judgment of the Supreme Court in the matter of Municipal Corporation of Delhi and Ganesh Razak and Another (1995 (1) LLJ 395). He has also contended that the workman had served for nearly ten years for the transport company and he raised the claim for wages for Sundays only after he resigned from the service i.e. claim made by the workman was grossly belated and could not have been entertained by the labour court. He has, therefore, relied upon the judgment of this Court in the matter of Employees State Insurance Corporation v.

Natvarlal Amrutlal Shah (37(3) GLR 835). He has also submitted that the transport workers are governed by the Motor Transport Workers Act, 1961 and under the provisions contained in section 25 thereof, Payment of Wages Act, 1936 applies to the motor transport workers In view of the said special enactment made for the benefit of the motor transport workers, the workman should have raised his claim before the authority under the Payment of Wages Act and not under the Act. In support of his contention, he has relied upon the judgment in the matter of Delhi Transport Corporation v. D.D.Gupta and another (1984(2) LLJ 79).

In reply to the contentions raised by Mr. Chari, Mr. Shah, the learned advocate appearing for the workman has submitted that the scope of section 33-C (2) of the Act is wider than that of an ordinary execution proceedings. He has submitted that in the instant case, the workman being a motor transport worker,under section 26 of the Motor Transport Workers Act, 1961, was entitled to the double wages for overtime for which he worked and accordingly, he has claimed Rs.30.60 ps. for each of the Sundays that he worked. He has, therefore, submitted that right to receive the double wages is a statutory right and it was never disputed that the petitioner was entitled to over time for rendering service on Sundays also. It was not in dispute that the last monthly wages drawn by the workman was Rs.460/-. Hence, the only question that was required to be examined by the Labour Court was whether the workman did render the services on Sundays as was claimed by him i.e. the benefit of service rendered on Sundays was required to be computed as provided under Section 33C (2) of the Act and,therefore, the labour court was within its power and authority in examining the claim made by the workman and in computing the benefits that would be available to him. He has next contended that the workman, soon after his tendering the resignation, raised this claim and,therefore, the claim raised by the workman cannot be said tobe a belated or stale claim. He has next contended that if more than one remedy is available to the workman for redressal of his grievance, the workman may choose one of the said remedies and if he avails of any one of the remedies, same cannot be denied to him on the ground that he could have availed of the another remedy as well. Mr. Shah has read over the deposition of the workman as well as the other workers who deposed in his favour and also the deposition made on behalf of the transport company. He has submitted that the actually there was no dispute that the workman did render services on Sundays. Mr.Shah has relied upon the order

made by the Labour Court on 14th September, 1981 rejecting the preliminary contention raised by the transport company. It appears that the transport company raised the preliminary issue regarding maintainability of the recovery application made by the workman and contended that the workman should have approached the authority under the Minimum Wages Act,1948 or the Payment of Wages Act,1936. He has submitted that though the said contention was rejected by the labour court, same was not challenged further. In support of his contentions, he has relied upon the judgments of the Supreme Court in the matters of the Central Bank of India Ltd. v. P.S.Rajagopalan etc. (AIR 1964 SC 743); Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and others (AIR 1969 SC 1335); Nityanand M. Joshi v. The Life Insurance Corporation of India and others (AIR 1970 SC 209); CHief Mining Engineer, M/s. East India Coal Co. Ltd. Bararee Colliery Dhanbad v. Rameshwar and others (AIR 1968 SC 218);and of this Court in the matter of M/s. R.L. Kalathia & Co. v. State of Gujarat and others (1990(1) GLH 233).Inthe matter of Central Bank of India Ltd. (supra), the Court considered the scope and ambit of section 33-C (1) &(2) of the Act. The Court held that

" the scope of section 33-C (2) is undoubtedly wider than that of sec.33-C(1) and.....it is possible that the claims not based on settlements, awards or made under the provisions of Chapter 65A mayalso be competent under section 33-C (2) and that may illustrate its wider scope."

In the matter of Town Municipal Council, Athani (supra), the jurisdiction of the labour court to entertain an application under Section 33C (2) of the Act was questioned on the ground that the remedy under section 21 of the Minimum Wages,1948 was available to the workman. The Court negatived the contention and held that the rates at which the workmen were entitled to the wages not being in dispute, the labour Court did have jurisdiction to entertain the application under section33-C (2) of the Act. However, challenge to the jurisdiction on the ground that the applications of the kind were not maintainable under section 33-C (2) was not permitted to be raised since the same was not raised either before the labour court or before the High Court. Similarly, in the matter of Nityanand M. Joshi (supra), the Court held that the scope of Section 33C (2) was wider than that of sec.33-C(1) and that Article 137 of the Limitation Act would not apply to the applications made under section 33-C(2) of the Act. In the matter of

East India Coal Company (supra), the Court held that;

"It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.....there is no reason to hold that a benefit provided by a statute or a Scheme made thereunder without there being anything contrary under such statute or section 33C (2), cannot fall within sub section (2). Consequently, the benefit provided in the bonus scheme made under the Coal Mines Provident Fund and Bonus Scheme Act, 1948 which remains to be computed must fall under sub section (2) and the labour court, therefore, had jurisdiction to entertain and try such a claim, it being a claim in respect of an existing right arising from the relationship of an industrial workman and his employer."

In the matter of Delhi Municipal Corporation (supra),the Court had occasion to decide the scope of section33-C (2) of the Act. The Court, considering several earlier judgments including one in the matter of Central Bank of India Ltd. (supra), held that;

"This decision itself indicates that the power of the labour court under section 33C (2) extends to interpretation of the award or settlement on which the workman's right rests like executing courts' power to interpret decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. "

In paragraph-12 of the judgment, the Court held that;

"the labour court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under sec. 33C (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and, thereafter, for the purpose of

> implementation or enforcement thereof,some ambiguity requires interpretation is treated as incidental to the labour court's power under section 33 C (2) like that of the executing Court's power to interpret the decree for the purpose of its execution. In course of such exercise of such power, the labour court may interpret the basis of the claim made by the workman. However, it has no jurisdiction to consider and adjudicate whether the workman is entitled to such benefit."

In the present case, it is true that the extent of wages earned by the workman was not disputed by the transport company before the labour court. However, in no uncertain terms, the transport company did dispute the factum of workman's rendering service on Sundays. It was categorically stated that the workman did enjoy the weekly off in the event he served on Sundays. The labour court in exercise of its jurisdiction under section 33C (2) of the Act could not have taken up the task of adjudicating and recording finding whether the workman worked on Sundays or not or whether in lieu of Sundays, he enjoyed any weekly off or not. In my view, therefore, there was no prior adjudication in favour of the workman that the workman did work on Sundays and for that, he was entitled to receive overtime in accordance with section 26 of the Motor Transport workers Act,1961. Neither did the employer recognise the workman's right to receive such overtime wages and in absence of such prior adjudication or recognition by the employer, the matter at dispute could not have been decided by the labour Court in exercise of its power under section 33C (2) of the Act. In my view, therefore, application was not maintainable before the labour Court.

The next contention raised by Mr. Chari in respect of the labour Court's jurisdiction to entertain the application made before it also requires consideration. In the matter of Delhi Transport Corporation (supra), the Court was considering a similar issue. The Court held that the Payment of Wages Act, 1936 was specially enacted for the benefit of all wage earners. However, a special enactment has been enacted i.e. Industrial Disputes Act,1947 for the benefit of a class of wage earners i.e. those who are the workman as defined under section 2 (s) of the Industrial Disputes Act. A further enactment has been made for the benefit of the motor transport workers i.e. Motor Transport Workers Act, 1961. In view of sec.25 of the said Act,

the provisions contained in the Payment of Wages Act, 1936 as in force for the time being shall apply to the motor transport workers engaged inthe motor transport undertaking. Sec.37 of the said Act provides that the provisions of the said Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law or inthe terms of any award, agreement or contract of service whether made before or after the commencement of the said Act. Hence, the Court held that in cases of Motor transport workers, payment of Wages Act,1936 has been specifically made applicable and the same shall apply to the claims arising out of the provisions contained in Motor Transport Workers Act, 1961. In that view of the matter, the motor transport worker should have approached the authorities under the Payment of Wages Act, 1936 for claim arising of the said Act and,therefore, the labour court had no jurisdiction to entertain the application under sec.33C (2) of the Act. In the matter of M/s. RL Kaladia & Co. (supra), this court held that both the remedies one under the Act and the other under the Minimum Wages Act were available to the workman and the fact that the workman could have availed of the remedy under the Minimum Wages Act,1948 would not prohibit the workman from going to the labour court for computation of their claims under sec.33C (2) of the Act. Similar is the decision of the Supreme Court in the matter of Town Municipal Council, Athani (supra). It is true that if more than one remedy is available to a workman, the workman may choose to prosecute either of the remedies available to him. In my opinion, the Delhi High Court is right in holding that the only remedy available to the Motor Transport Worker was under the Payment of Wages Act, 1936. In the present case, the workman is a motor transport worker and,therefore, in my view, as is held by the Delhi High Court, the application under section 33C (2) before the Labour Court was not competent. The labour court wrongly rejected the preliminary issue raised by the transport company.

In view of the above discussion and my decision that the application under sec. 33C (2) was not maintainable before the labour Court, I need not dwelve upon the issue of delay raised by Mr. Chari. I, therefore, do not deal with the same.

Petition is, therefore, allowed. Mr. Chari states that pursuant to the interim order granted by this court, the transport company had deposited a sum of

Rs.7,500/- inthe labour court which amount has been withdrawn by the workman. He states that the transport company shall not recover the aforesaid amount of Rs.7500/- which is paid to the workman as aforesaid. Rule is made absolute. There shall be no order as to costs.

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Vyas